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Date of Decision: 13th September 1995

SPECIAL CIVIL APPLICATION NO. 6857 of 1990

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri M.R. Shah, Advocate, for the Petitioners  
Shri Y.M. Thakkar, Asst. Govt. Pleader, for Respondent No.1  
Shri P.J. Bhatt, Advocate, for Respondents Nos. 2 and 3  
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CORAM: A.N. DIVECHA, J.  
(Date: 13th September 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 16th February 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad ('the Appellate Authority' for convenience) on 23rd March 1990 in Appeal No. Ahmedabad-43 of

1985 is under challenge in this petition under Art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioners to be surplus by in all 5908.68 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners filed their separate declarations in the prescribed forms under sec. 6(1) of the Act. The subject-matter of the forms was common. They were therefore processed together. After observing due formalities, by his order passed on 16th February 1985 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by in all 5908.68 square meters. Its copy is at Annexure B to this petition. The aggrieved petitioners carried the matter in appeal before the Appellate Authority under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-43 of 1985. By his order passed on 23rd March 1990 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Art. 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. It may be mentioned that the property bearing Survey No. 217/D situated at Rajpur-Hirpur in all admeasuring 5530 square meters does not belong to the petitioners exclusively in view of the decree passed by Court No.3 of the City Civil Court at Ahmedabad on 30th August 1989 in Civil Suit No. 32 of 1985. Its copy is a part of Annexure A to this petition. I am told at the Bar that the aforesaid decree has been summarily affirmed in appeal by this court by the order passed on 28th December 1989 in First Appeal No. 1175 of 1989.

4. It is unfortunate that the Appellate Authority in his appellate order at Annexure B to this petition has refused to recognise the aforesaid decree passed by the City Civil Court and summarily affirmed by this court by pressing into service sec. 42 of the Act. This conclusion of his cannot be sustained in view of the ruling of this court in the case of B.H. Parekh v. Deputy Collector and Another reported in 1994(2) G.L.H. 185. The aforesaid decree passed by the City Civil Court will have to be given effect to.

5. It transpires from the impugned order at Annexure B to this petition that certain constructed properties in existence prior to 1976 are included in the holdings of the petitioners. That is contrary to the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. West Bengal and another reported in AIR 1992 SC 1567. In view of the aforesaid binding

ruling of the Supreme Court, the properties constructed prior to 1976 will have to be excluded from the holdings of the petitioners.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to this petition as affirmed in appeal by the order at Annexure C to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Since it is found from the aforesaid decree passed by the City Civil Court that respondents Nos. 2 and 3 herein and one sister of theirs, named, Anita have their shares in the property bearing Survey No. 217/D situated at Rajpur-Hirpur admeasuring 5530 square meters, they should also be impleaded as parties to the proceedings after remand.

7. In the result, this petition is accepted. The impugned order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 16th February 1985 under sec. 8(4) of the Act at Annexure B to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 23rd March 1990 in Appeal No. Ahmedabad-43/85 at Annexure C to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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